

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEVEN JOVAN NELSON,

Defendant-Appellee.

UNPUBLISHED

August 19, 2014

No. 316624

Jackson Circuit Court

LC No. 12-004868-FH

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

O'CONNELL, J. (*concurring*).

I concur with the result reached by the majority opinion. I write separately to address the expectation of privacy in discarded trash and to briefly address the United States Supreme Court decision in *Florida v Jardines*, 569 US ____; 133 S Ct 1409; 185 L Ed 2d 495 (2013), as it relates to the present case. Contrary to the majority opinion, I conclude that defendant had no reasonable expectation of privacy in trash that he had discarded into an outdoor trash container. See *United States v Purifoy*, ____ F Supp 2d ____, ____; 2014 Westlaw 167219, at * 7 (Docket No. 11-15044, April 28, 2014).

The more difficult question presented in this case is whether a search occurred within the curtilage of defendant's home. In my opinion, that is a significantly closer question, but not outcome determinative to this case. Were I to address this issue, the result would be similar to the result in *People v Holt*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket No. 302017), where we decided that searches conducted prior to the *Jardines* decision are not subject to suppression under the new rule established in *Jardines*.

/s/ Peter D. O'Connell